

**BOARD OF APPEALS CASE NO. 5237**

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**BEFORE THE**

**APPLICANT: H. Carl Stephen**

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**ZONING HEARING EXAMINER**

**REQUEST: Interpretation and variance to disturb  
the Natural Resource District; 402 South  
Fountain Green Road, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 4/3/02 & 4/10/02**

**HEARING DATE: May 29, 2002**

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**Record: 4/5/02 & 4/12/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, H. Carl Stephen, Inc., is requesting an interpretation, pursuant to Section 267-9D of the Harford County Code, or in the alternative, a variance, pursuant to Sections 267-41D(5)(e) and (6) of the Harford County Code, to disturb the Natural Resource District (NRD) in an R2/Urban Residential District.

The subject property is located at 402 Fountain Green Road, Bel Air, MD 21015 and is part of the Greenridge II subdivision at Section 44. The parcel is more particularly identified on Tax Map 49, Grid 1F, Parcel 880, Lots 5, 6 and 7. The combined lots are 1.46± acres in size, are zoned R2/NRD and are entirely within the Third Election District.

Mr. Tory Pierce appeared and qualified as an expert civil engineer. Mr. Pierce stated that the Applicant proposes to build 3 houses on the subject parcel as part of the Greenridge II subdivision. There were 2 homes on this land previously, both of which were built prior to 1900. The two older homes were occupied until 1998. There were lawn areas around these two homes which are designated NRD. Mr. Pierce pointed out that all of the NRD buffer area proposed to be disturbed by the Applicant in constructing three homes has already been disturbed by the lawn existing since 1900 or so. The houses need to be laced 60 feet back from MD Route 543 and some of the NRD buffer area will need to be further disturbed for grading and reclaiming that will allow the new homeowners to fully utilize the new homes and surrounding yards.

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Mr. Rob Jones appeared as an expert environmentalist and he described the existing wetlands and buffer areas. He confirmed the amount of NRD and described the extent of disturbance. The wetlands themselves will not be disturbed by this project and the only areas of NRD that will be disturbed have already been cleared and used as lawn for over 100 years.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. Mr. McClune stated that the Department found that the subject parcel was unique and supported the request for variances with conditions. The Department did not feel like the request constituted a valid non-conforming use because the houses are gone that used that disturbed area of NRD so that the use has ceased and is being replaced by new development.

There were no persons that appeared in opposition to the subject request.

### **CONCLUSION:**

The Applicant, H. Carl Stephen, Inc., is requesting an interpretation, pursuant to Section 267-9D of the Harford County Code, or in the alternative, a variance, pursuant to Sections 267-41D(5)(e) and (6) of the Harford County Code, to disturb the Natural Resource District (NRD) in an R2/Urban Residential District.

Harford County Code Section 267-41D(5)(e) states:

“Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.”

The Hearing Examiner agrees with the Department of Planning and Zoning that the non-conforming use has ceased for more than one year and is considered abandoned. However, the Natural Resource District buffer has already been disturbed and the new construction will not create any adverse impacts that do not already exist on the parcel due to historic use of this area as lawn. The circumstances are unique and construction can be accomplished in a manner that does not further impact the NRD.

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For the reasons stated by the Applicant's experts and the Department of Planning and Zoning, the Hearing Examiner recommends approval of the requested variances, subject to the following conditions:

1. The Applicant construct a fence (i.e. split rail or board on board) along the north side of Lot 7 and the rear property line of Lots 5, 6 & 7 to discourage encroachment by future property owners in the adjacent property.
2. A preliminary plan shall be submitted to the Department of Planning & Zoning for review and approval of the three (3) lots. A final plat shall also be submitted for review and recordation in the County Land Records.
3. The Applicant prepare and submit a Forest Stand Delineation and Forest Conservation Plan to include the area of all the lots (1 through 7) to the Department of Planning and Zoning for review and approval prior to the approval of the preliminary plan for these new lots. The Forest Conservation Plan must provide for plantings in the unforested portions of the Natural Resource District between Lots 5 and 6.
4. The purchaser of the lots shall be provided with a statement identifying the lots proximity to the wellhead protection area.

**DATE: JUNE 17, 2002**

**William F. Casey  
Zoning Hearing Examiner**